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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,266	02/18/2004	Petrus A. Besselink	JM-004 CON2	4210

35023 7590 10/18/2007  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP  
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SAN DIEGO, CA 92130

EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/782,266

Applicant(s)

BESSELINK, PETRUS A.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 91-95, 113-122 and 127-133 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 91-95, 113-122 and 127-133 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/26/06</u> . | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 118 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not seen how the device can be expanded to a plurality of final diameters since the expansion to a first diameter and the later expansion to a second diameter would make the first diameter no longer final.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the

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differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 91-95, 113, 118 and 130-133 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fischell et al. (5,695,516). As to claim 91, Fischell et al. disclose the steps of forming an expandable device with a plurality of cells, selecting the geometry of the cells such that the cells expand autonomously once expanded past a transition point (When the stent is self expanding as indicated in col. 3, lines 22-26, it expands autonomously during its entire expansion, including the portion when it is expanded past a transition point. The transition point could be, for example, the mid point of expansion in which is transitions from a relatively small diameter to a relatively large diameter.) and radially expanding the expandable device past the transition point and against the surface of the passageway (due to its self-expansion). Alternatively, it would have been obvious that the Fischell et al. stent expands autonomously during its entire expansion since it is self expanding. As to claim 92, note col. 1, lines 30-32 of Fischell et al. As to claim 95, note col. 3, lines 5-15 of Fischell et al. As to claim 113, members 12 and 14 are arcuate since they

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are curved in the circumferential direction of the stent. Note that member 12 is referred to as an "arc". As to claim 113, the Fischell et al. stent, when it is balloon expandable as indicated in col. 3, lines 22-26 is bistable since it is stable in both the unexpanded state and the expanded state. Note also, page 19, lines 22-23 of applicant's specification which defines "bistable" as including more than two stable configurations.

Claims 114-117, 119-122 and 127-129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al. (5,695,516). Fischell et al. fail to disclose the step of attaching a wrapping to the outer surface of the stent. However, it is old and well known in this art to attach a graft to the outer surface of a stent in order to obtain the advantage of isolating a portion of the body passageway from blood passing through it. It would have been obvious to attach a graft to the outer surface of the Fischell et al. stent so that it too would have this advantage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can

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be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht

A handwritten signature in black ink, appearing to read "Michael Thaler", written in a cursive style.

MICHAEL THALER  
PRIMARY EXAMINER  
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